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Probe finds uneven justice

'Contract attorney' system to be subject of committee inquiry

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[REVIEW-JOURNAL](#)

A system for assigning private attorneys to poor defendants in Clark County suffers from a lack of oversight that yields uneven justice and questionable government spending, a Review-Journal investigation has found.

In response to the newspaper's six-month examination, court officials have formed a committee to examine how to fix the so-called "contract attorney" system, also known as the track or conflict system.

"We have to evaluate how to do things better," District Court Administrator Chuck Short said. "We've assumed the system works efficiently and effectively, but we look at this as an opportunity to review how we do business."

In the system, judges hire private attorneys to handle misdemeanor and felony cases that the county public defender's office cannot because of some conflict of interest. In a case with co-defendants, for example, the public defender's office cannot represent both parties because one might implicate the other.

No cap is placed on the number of cases a conflict attorney can be assigned or the number of privately retained cases the attorney can handle at the same time.

The attorneys' contract with the county pays each \$3,000 per month, a funding method that can yield a financial loss if the attorney spends too much time on a case. The system encourages hasty plea bargains.

A similar system in Las Vegas Municipal Court, which tries only misdemeanors, pays defense lawyers \$6,500 per month.

But some of the conflict lawyers in District Court have taken advantage of a state law, which allows hourly payment on certain especially serious felony cases, to bill the county hundreds of thousands of dollars a year. Though they are not required to do so, judges routinely give these cases to the contract attorneys they hire, some of whom are regular campaign contributors.

It is justice on the cheap, but some contract attorneys live richly by it, in part because court administrators and county officials have paid scant attention to how money is spent. The arrangement cost about \$4 million in 2006 and is budgeted for \$5 million this year.

In a six-month investigation, the newspaper examined every case the 30 contract attorneys took to District Court between July 1, 2005, and June 30, 2006. Some 1,500 in all, they included both the attorneys' private cases and those assigned by the judges. They included all cases in which lawyers were paid up to \$125 an hour because a defendant faced the death penalty or life in prison.

The findings of the newspaper's investigation included the following:

- Some contract attorneys spent a vastly disproportionate amount of time on felony cases that pay hourly, leaving little time for the many other cases they have been assigned. In the first six months of last year, one track lawyer said he worked more than 950 hours on a small group of hourly-fee cases, several of which the district attorney's office admitted were fairly weak and unlikely to require a great deal of work. Overall, the attorney billed the county for nearly \$400,000 last year, much of it for work done in 2005 and 2006.
- In the approximately 1,200 appointed cases that were not paid hourly during the one-year period the newspaper examined, contract attorneys in District Court had a trial rate of just over 1 percent, far below the national average and less than attorneys in the county public defender's office.
- Defense attorneys with little trial experience were frequently assigned to defend people accused of serious felonies, including murder and sexual assault. Nevada has no attorney-eligibility standards other than for capital cases. Judges admit they give hourly appointments to contract attorneys as a reward for handling so many other cases for so little money.
- Some contract attorneys had limited contact with defendants before trial or plea bargain. A review of 71 cases in which defendants got at least three years in prison showed that 16 received no jail visits from their attorneys. Of the 16 who did not receive visits, 13 had cases that did not qualify attorneys for hourly payment.
- Poor oversight has allowed attorneys who hold contracts to subcontract or turn over work to other lawyers without the knowledge of court administration. Many contract attorneys have not even submitted applications and resumes to court officials. Some judges ignore consistent complaints about their contract attorneys.
- Apparent overpayments were not limited to contract attorneys. The inquiry also revealed that another local lawyer billed the county nearly \$458,000 last year for cases in Clark County Family Court. Attorney Christopher Tilman claimed in invoices that he worked more than 24 hours on each of 22 different days in the first half of 2006. Tilman, who receives hourly appointments but is not a contract attorney, said he did not know he had overbilled but suggested he might have had other attorneys helping him those days.

The contract and assignment system falls short on several of the "Ten Principles of a Public Defense Delivery System" issued by the American Bar Association and endorsed by the U.S. Justice Department.

Its biggest shortcomings, legal experts said, are the payment system and the fact that judges are responsible for hiring and firing the contract attorneys who appear before them.

"It's shocking that this kind of thing still goes on," said Norman Lefstein, a law professor at Indiana University who has written extensively on the history of indigent defense. "There aren't many places left in the country where lawyers practice before the same judges that hired them. There is no independence in that kind of system."

The county public defender's office was criticized several years ago for similar systemic flaws that culminated in the county paying a \$5 million settlement in 2004 to a former death row inmate whose lawyer made glaring mistakes at trial.

The criticisms and lawsuit prompted changes at the county office, including a six-week training program for new attorneys and the creation of a murder and sexual assault team within the office.

The contract system, by contrast, has remained virtually untouched for decades.

In addition to the financial disincentive contract attorneys have on the vast majority of their cases, they also face practical disadvantages.

Unlike full-time public defenders, contract attorneys are not able to phone inmates at the county jail or easily get background checks on potential witnesses. Nor are they entitled to investigators or expert witnesses without permission from a judge.

These disadvantages are passed along to defendants whose cases they are assigned.

The newspaper's examination indicated that problems with the system probably will worsen as the county court system continues to grow.

Between 2003 and 2005, the number of cases filed in District Court increased from 7,909 to 9,651, putting more pressure on an already overburdened system. Contract attorneys now are involved in about one out of every seven indigent cases.

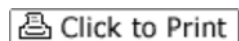
District Judge Stewart Bell, who is heading the committee of judges and court officials, said the panel soon would hold its first meeting.

"It's always a good idea to look at processes to see if they're working," Bell said in an interview.

Short said the county would consider several options, including providing better oversight of the contract system or expanding the county special public defender's office, which currently handles only murder cases and cases dealing with the termination of parental rights.

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